



City of Dublin

Office of the City Manager

5200 Emerald Parkway • Dublin, OH 43017-1090

Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Members of Dublin City Council

From: Dana L. McDaniel, City Manager 

Date: June 8, 2017

Initiated By: Claudia D. Husak, AICP, Senior Planner
Jennifer D. Readler, Law Director
Brian Martin, Zoning Inspector, Certified Arborist
Michael Hiatt, ISA, Zoning Inspector
Shawn Krawetzki, PLA, ASLA, CPSI, Landscape Architect

Re: Tree Replacement Fee Waiver Policy

Summary

This is a request for review and approval of an update to the existing Tree Replacement Waiver. The policy was approved by City Council in 2001. Since its adoption, 22 waivers to the tree replacement requirements have been requested. The policy is applicable to trees considered protected in the Zoning Code and therefore required to be replaced on an inch-for-inch basis. While there are many different approaches to this subject, a staff team has worked together to propose this update to the policy to include more stringent criteria for eligibility, submission requirements, and allow replacements with different sized trees as well as a wider variety of species.

Background

City Council discussed the Tree Waiver Policy in the Fall of 2016 and requested staff follow-up regarding potential modifications to the City's approach to addressing tree replacement waiver requests. Staff has reached out to other communities and researched tree preservation and replacement requirements, which are included in the accompanying benchmarking document.

At the April 10, 2017 meeting, staff provided a summary memo to Council requesting authorization to advance an update to the Tree Waiver Policy. The Planning and Zoning Commission reviewed the draft policy at their May 18, 2017 meeting and recommended approval to City Council. This memo summarizes the proposed updates to the policy and the discussion from the Planning and Zoning Commission.

History

The tree preservation chapter applies to healthy trees, which have a minimum diameter of six inches breast height, considered "protected" trees. A tree preservation plan is required to be submitted prior to any construction activity, and the Code requires all reasonable effort be made to design the site to avoid

unnecessary tree removal.

Protected trees that are removed are required to be replaced inch-for-inch within one year of removal with deciduous trees at a minimum size of 2.5 inches. A fee in lieu of tree replacement may be paid if full replacement would result in unreasonable crowding.

The fee is based on the excess aggregate of diameter and currently is \$100 per caliper inch.

The tree waiver policy was adopted by City Council in 2001 to create a more uniform and objective approach to tree waivers due to the increasing number of waiver requests made at the time. The goal was to find a way to balance the intent of the tree preservation ordinance, approved by Council in October of 1998, against the actual financial hardship imposed by full implementation. Sites considered "heavily wooded" presented a challenge to the replacement requirements. A heavily wooded site has been defined as land containing at least 100 protected trees per acre or 1,000 total inches of protected trees per acre. The adopted tree waiver policy allows, if approved by City Council on a case by case basis, for tree-for-tree replacement to occur rather than inch-for-inch replacement for protected trees between six and 23 inches in diameter. The policy was amended to include a provision that landmark trees (24 inches or greater in diameter) be exempt from the tree-for-tree replacement and be replaced inch-for-inch.

A majority of the waivers have been requested as stand-alone Council actions, and Council has granted a total of 22 waivers (six were approved prior to the adoption of the policy). Several developments, however, have requested relief from the tree replacement requirement through development agreements and through the Planned District rezoning process by incorporating waiver language in the development text.

The tree waiver for Lifetime Fitness was incorporated into the development agreement and the Wasatch Estates (Deer Run), Tartan Ridge and Tartan West developments include tree waivers in the approved development texts. As part of the rezoning request for Celtic Crossing, Council requested the removal of the tree waiver from the development text and instructed staff to no longer include tree waivers through this method.

The current tree replacement fee waiver policy takes into consideration whether all codes have been met on the site and if methods have been used to minimize tree destruction. City Council approved this policy in March 2001. Given these minimal criteria and a lack of submission requirements, the administration of this policy has, at times, been difficult. In the fall of 2016, Council requested staff provide criteria that more clearly define when a tree waiver may be appropriate.

Proposal

As requested by Council, staff has reviewed the history and intent of the tree waiver policy to help formulate an update to the current program. While there are fewer than

five sites considered heavily wooded in the City, many developers continue to discuss the option of a fee waiver during their initial meetings with staff. Developers are responsive to the City's desire to preserve as many trees as practical, however some tree removal is unavoidable. In some cases, this can still add up to a sizeable replacement requirement.

Staff's proposal for a revised tree waiver policy includes three new eligibility criteria for a site for which a waiver is requested. These criteria address the number of trees and inches present on a site and/or disturbed as part of development; the percentage of preservation of trees incorporated into the proposed site layout; and the requirement of a tree removal permit prior to any removal.

Together with staff from the Department of Parks and Recreation, Planning has created a submission requirement list, which relies heavily on information regarding the size, species and conditions of trees as they relate to the proposed layout of development.

Staff proposed to not only require a tree survey with a listing of the species, size and condition but also a means of identifying the surveyed trees in the field to ensure staff can verify the accuracy of the survey. A comparison of Code required tree replacements versus the waiver request should also be required.

The revised policy includes definitions, which in more detail than the Code describe tree conditions.

The major update to the policy deals with tree ratings and proposes a prioritization system for trees, where replacement is based on which type of tree is proposed to be removed. The prioritization also defines Landmark trees more clearly and addresses multi-trunk trees on how they are measured.

This update identifies replacement requirements that differ from the current policy based on a sliding scale for replacement trees depending on the tree priority category. As in the current policy, Landmark trees would continue to be replaced on an inch-for-inch basis. However, the three different priority categories would be replaced on a basis of 3 to 1 for Priority 1; 2 to 1 for Priority 2; and 1 to 1 for Priority 3. The update would allow replacements at 1.5 inches in caliper (Code requires 2.5 inches); however, staff has noted diversity and availability issues for the larger caliper requirements. Given the fast growth of trees at this size and their increased chances of survival, staff is confident that this proposed deviation from Code will provide the same high quality landscape as the larger trees within a short period of time.

The proposal also allows ornamental and evergreen trees to be used for up to 33% of tree replacements, which has been approved for several Planned Districts within the City, but is not currently permitted in the Zoning Code. Finally, the proposal permits certain replacements trees to fulfill buffer requirements as stipulated in Planned District texts and in the Code for commercial property buffer requirements.

Recommendation of the Planning and Zoning Commission

The Planning and Zoning Commission recommended approval of this policy at their May 18, 2017 meeting. The Commission discussed the need to address preservation of trees and endangered species as well as an update to the tree replacement fee. The Commission also requested staff consider limiting the percentage of trees that may be replaced with trees less than 2.5 inches in caliper and the need for an intent statement for the policy. Staff has included an intent statement to the policy and clarified with the Commission that this policy is to address replacement requirements rather than preservation requirements, which may be addressed in a future Code update. Staff has reviewed the proposed policy and finds that limiting the percentage of smaller replacement trees may inhibit the availability and diversity of those replacement trees and will also increase the number of inches to be replaced, which is not the intent of the policy.

Recommendation

Staff has drafted an updated Tree Waiver Policy, as requested by City Council that clearly addresses eligibility requirements, application submission contents, defines tree health and ratings and proposes a sliding scale for replacements. This updated policy will be easier to administer for staff and Council as the details are more clearly defined. Staff requests City Council review this proposal and approve the updated Tree Waiver Policy.



Tree Waiver Policy Proposal

I. Intent

It is the intent of this policy to ensure protected trees removed from wooded sites are replaced on-site to the extent possible to ensure the quality of life in the city is maintained, the image of the community is enhanced while allowing for the reasonable development of lands in such a manner that it meets the high-quality standards of the city.

II. Criteria for a waiver

The developed or disturbed area must meet these minimum requirements:

1. The developed or disturbed area contains 100 protected trees (as defined in the Zoning Code) per acre, or contain 1,000 inches of protected trees per acre (trees must **be in good or fair condition**) or **be otherwise considered 'heavily wooded'** by the City Forester or designee.
2. Site layout must preserve at least 50% of the priority 1 trees (as defined in this policy) and 50% of the landmark trees on site (trees must be in good or fair condition).
3. Protected trees have not been removed from the site without a Tree Removal Permit.

III. Waiver Submittal Requirements

A request for a tree waiver must be accompanied by the following:

- Tree Survey
 - List the size, species and condition of all trees greater than 6-inches DBH unless a portion of a wooded area will not be disturbed.
 - Trees within 50 feet of development or disturbance, on the same or adjacent property, shall also be surveyed and listed in the survey table. These trees must be identifiable by the number listed in the survey, which is physically placed on the tree with a removable ribbon or tree tag.
 - All trees may not need to be tagged, subject to approval by the City Forester or designee.

- The tree survey shall show or list the specific trees proposed for removal.
- A certified arborist shall be used to complete the tree survey to ensure accurate information is submitted.

- Development Plan
 - Must indicate roads, buildings, utilities, and grading as well as all existing trees.
 - The waiver, if granted, shall apply to additional trees requiring removal during construction.

- Waiver Request Letter
 - Submitted to the City of Dublin Division of Planning.
 - Must describe how the proposal meets the waiver criteria.
 - Must include detailed information comparing the replacement requirements of the tree replacement requirements in the Zoning Code to the waiver.
 - Any other information to support your request to waive Code requirements may also be included.

IV. Health Assessment Ratings

- Good Condition
 - Dieback is limited to less than 10%
 - Canopy density and leaf size are normal
 - Less than 20% of the trunk has any decay
 - No major insect or disease problem
 - Tree can be expected to live for at least 20 years.

- Fair Condition
 - Dieback is limited to one or two large branches and up to 20% of canopy
 - Foliage is showing signs of stress
 - Up to 33% of trunk has any decay
 - No major insect or disease problem
 - Tree is expected to live approximately 20 years, could be longer with care

- Poor Condition
 - Dieback is found in over 30% of canopy with 3 or more large, dead branches;

- Foliage color and size is abnormal for species
 - More than 33% of trunk is decayed or hollow
 - More than 33% of the roots are removed or decayed
 - Tree is not expected to live more than a few years.
- Dead: No live canopy.

V. Tree Ratings

Individual trees of any size and species may be a higher value and placed in Priority 1 based on exceptional aesthetic quality, historical significance or rareness in the judgment of the City Forester or designee.

Priority 1: All trees measuring over 18-inches DBH excluding species listed under Priority 3

Priority 2: All trees between 6-17-inches DBH excluding species listed under Priority 3

Priority 3: Ash, black cherry, pear and other species listed in Appendix E of the City of Dublin Zoning Code, Unacceptable Trees for Street Tree Use. Any multi-trunk trees with an aggregate 15" **DBH unless it meets Landmark** Tree status.

Landmark Tree: Any tree measuring over 24-inches diameter at breast height (**4.5'** height) in good or fair condition. These trees usually have a single trunk. In the case of a tree having more than one trunk or stem, the DBH of the largest trunk or stem must be at least 18 inches to be considered a landmark tree.

VI. Replacement Requirements for Trees in Good and Fair Condition

Tree diversity for new plantings shall include no more than 10% of any one species, 20% of any one genus, or 30% of any family, as far as practical and subject to the approval of the City Forester.

- 1) Priority 1 trees shall be replaced on a 3-1 basis with a 1.5" **minimum caliper** tree.
- 2) Priority 2 trees shall be replaced on a 2-1 basis with a 1.5" **minimum caliper** tree.
- 3) Priority 3 trees shall be replaced on a 1-1 **basis with a 1.5"** minimum caliper tree

- 4) All landmark trees in good or fair condition shall be replaced on an inch for inch basis with a **2.5" caliper** tree.
- 5) Tree replacements can include ornamental and evergreen trees, up to 33% of the total tree number being replaced on site.
- 6) Priority 2 and 3 replacement trees may be used to fulfill aesthetic and buffer planting requirements of a PUD. Front yard trees, street trees and other trees required in the landscape code cannot be fulfilled using a tree replacement. For commercial developments, replacement trees may be used to satisfy Perimeter Buffer Landscape requirements (153.133(A)).



RECORD OF ACTION

Planning & Zoning Commission

Thursday, May 18, 2017 | 6:30 pm

The Planning and Zoning Commission took the following action at this meeting:

**1. Tree Replacement Fee Waiver
17-041ADM**

Administrative Request

Proposal: An update to the Tree Replacement Fee Waiver policy as requested by City Council.

Request: Review and recommendation of approval to City Council for an Administrative Request to update the Tree Replacement Fee Waiver policy.

Applicant: Dana McDaniel, City Manager, City of Dublin.

Planning Contact: Claudia D. Husak, AICP, Senior Planner.

Contact Information: (614) 410-4675, chusak@dublin.oh.us

MOTION: Mr. Brown motioned, Ms. Mitchell seconded to recommend approval to City Council for an Administrative Request to update the Tree Replacement Fee Waiver policy.

VOTE: 7 – 0

RESULT: The Administrative Request was recommended for approval to City Council.

RECORDED VOTES:

Victoria Newell	Yes
Amy Salay	Yes
Chris Brown	Yes
Cathy De Rosa	Yes
Robert Miller	Yes
Deborah Mitchell	Yes
Stephen Stidhem	Yes

STAFF CERTIFICATION

Claudia D. Husak, AICP, Senior Planner



**2. Tree Replacement Fee Waiver
17-041ADM**

Administrative Request

The Chair, Victoria Newell, said the following application is a request for an update to the Tree Replacement Fee Waiver policy as requested by City Council. She said this is a request for a review and recommendation of approval to City Council for an Administrative Request to update the Tree Replacement Fee Waiver policy.

Claudia Husak indicated she would provide a brief presentation to allow more time for receiving feedback from the Commission. She introduced two city employees who will help answer questions as they are more knowledgeable about trees: Shawn Krawetzki, Landscape Architect, Parks and Recreation Department; and Brian Martin, Arborist and Landscape Inspector, Planning Division.

Ms. Husak stated there is a requirement in the Zoning Code that requires tree replacement for trees removed and considered protected, which are trees 6 inches and above, in good and fair condition, to be replaced inch-for-inch, if development occurs.

Since that Code was adopted, she said, there have been sites that have had a difficult time meeting the inch-for-inch replacement, which prompted City Council's approval for relief of that requirement. Council requested from staff a policy for a Waiver of the Fee-in-Lieu or inches to be replaced and that has been in place now for 16 years. She explained that under the typical waiver, as it is in place today, there would be an allowance for a replacement of tree-for-tree rather than inch-for-inch for any trees that are less than 24 inches in diameter; trees 24 inches in diameter or greater are considered landmark trees. She added landmark trees are still be required to be replaced inch-for-inch.

Ms. Husak reported that 22 requests were made during those 16 years that Council approved with one request disapproved. She noted Council reviewed a Waiver in the fall of 2016 that was discussed at length; as a result, Council requested that staff follow-up regarding potential modifications to the City's approach to addressing tree replacement waiver requests.

Ms. Husak said a memo was provided to Council April 10, 2017, laying out options or different processes as to how this policy could go forward for updates and Council instructed staff to devise a new policy. She presented the updates proposed:

- Extensive and detailed submission requirements
- Eligibility criteria for wooded sites, preservation percentage, permit required
- Clarifying multi-stem landmark trees
- Tree prioritization based on species, size, health
- Replacement on a sliding scale based on priority
- Permits 33% of replacements as evergreens or ornamental trees

Updates being proposed as part of this revised policy, Ms. Husak said, include more extensive and detailed submission requirements because currently the Tree Replacement Fee Waiver policy is just a policy and not a codified process. She said eligibility criteria was included to address a wooded site and how much of the site/area is actually considered to be wooded. She noted there are not many wooded sites left in the City but as they do come forward and get developed, it is important to have criteria in place. She explained staff is proposing that a percentage be used for preservation requirements so preservation will remain. She said the most important change is to prioritize replacement based on the species, size, and health of the tree that is being removed. She explained that trees would be identified based on four levels of prioritization, one being the most valuable for trees with exceptional aesthetic

quality or historical significance or rareness by the City Forester or designee. She added staff is requesting that replacements could now include evergreens or ornamental trees for up to 33%.

Ms. Husak reported that staff found through its review of the Riviera Development that there should be an allowance for replacements to have a 1.5-inch tree because there is more variety to be had and they grow fast. She indicated that a 1.5-inch tree would reach the growth as a 2.5-inch tree in just a couple of years.

Ms. Husak presented an overview of four developments of examples that have been approved by the Commission: Stansbury, Hawthorne Commons, Riviera, and Autumn Rose Woods. She explained the tree waiver analysis she presented and focused on inches to compare Code versus the current Waiver versus the Waiver being proposed by staff this evening. She said staff has conducted a lot of research and there is not a good comparison in other municipalities. She said she has reached out to a few people in the area and it seems a lot of the municipalities look at it from "if development occurs in a PUD, we write it in", but she said that it seemed as though Council preferred an approach where everybody could be treated equally.

Ms. Husak emphasized staff feels strongly about the submission requirements and having more details at an earlier stage as well as prioritizing the replacements based on the types of trees removed.

Ms. Husak said a recommendation of approval to City Council is being recommended.

Chris Brown indicated the proposed Waiver appears to increase the number of inches to be replaced. Ms. Husak agreed.

Mr. Brown said he has planted over 50 trees in his yard over the years, anything from 1-inch caliper to 3.5-inch caliper and he found growth depended on the species as to how fast the root system starts taking off.

Mr. Brown questioned the ornamental percentage being proposed.

Brian Martin clarified that evergreens would be included in that 33% to provide diversity.

Shawn Krawetzki stated the other piece of that is for edges of wooded areas you can get more of the dogwoods and redbuds, etc. and that is a perfect place for them to gain a separation in the character of the wood line growing in a more natural way. With the evergreen side, he said, a forest may have more evergreens being cut.

Mr. Brown supported staff's recommendation for submitting a plan for replacement and not just letting the developer do what they want. Ms. Husak added that a developer may have a plan but then when it comes time to plant, the plants they intended to use may not be available so there are a lot of substitutions used.

Mr. Krawetzki said the applicant could explore more of the native palettes because nurseries do not typically grow for commercial sale and the smaller nurseries may not grow the quantity of 2.5-inch trees. From a forestry standpoint, he said, if two trees are planted and both are the same species, and one is a smaller caliper tree, the smaller tree will quickly grow as it adapts to the soil conditions faster.

Bob Miller inquired about the impact of these proposed changes to the applicant.

Ms. Husak said in areas where there are heavy woods with trees growing tightly together, staff would not be able to distinguish one tree from another and if the tree survey states they are all in good condition

staff is asking for some marking on these trees for easier identification (tag, ribbon, or something easy to remove).

Ms. Husak addressed the question about replacement being a burden on the applicant. She said it depends on what trees are on site. She said if there are a lot of large trees, a lot of trees that staff would consider to be in the Priority 1 category, then our proposal would require the applicant to pay more or replace more than what the policy states currently because the current policy does not distinguish what type of tree is being removed.

Deborah Mitchell said adding more dimensions beyond just the measurement of inches is a great idea. She asked if a tree would be categorized based solely on species. Mr. Krawetzki said some of those old, large trees with wonderful canopies will become landmark trees, which are treated differently. Ms. Mitchell clarified landmark trumps species. Ms. Husak said historical value will also be taken into account.

Steve Stidhem inquired about the Fee-in-Lieu requirement. Ms. Husak explained that each development would have an inch requirement for replacement. She said staff would work with the applicant to determine how many inches can actually be placed on site as overcrowding does not allow the trees an opportunity to grow. She said any inches above what is determined to fit on site would be paid as a Fee-in-Lieu.

Mr. Stidhem inquired about the fee amount, which has been \$100 for a long time. He indicated fees can run \$100 - \$175 per inch in surrounding areas. She said ultimately it would require Council action for an increase in the fee amount.

Cathy De Rosa suggested a statement of intent be added at the top of the policy update. She thought it would help applicants to understand the "why" of our requirement. She asked if the City ever conducts landmark tree surveys of the City. Ms. Husak answered the Girl Scouts volunteered to do it over 20 years ago but it was not necessarily completed professionally.

Amy Salay indicated that landmark trees are identified as sites develop.

Ms. De Rosa asked if it would make sense to do a landmark tree survey.

Vicki Newell said there were naturalists in the community that were great advocates for these things in the past. She indicated the City used to give tours. She recalls that the City has Paw Paw trees and trees that are endangered species.

Ms. Husak clarified that the policy speaks to replacement requirements and not to preservation. Vince Papsidero said preservation is something we could address as other municipalities have; Dublin has just never had a policy written for preservation.

Ms. Salay indicated that she understood the rub at Council was they have given a lot of Waivers over the years and it was not so much preserving trees and it was about money and how much a developer going to have to pay to develop their site. Council had given breaks she thought and there is a legal discussion in this because we could make it completely and financially impractical to develop a site. She cited Autumn Rose as an example; they would not be permitted to cut any trees because they are all landmark trees. Then we have said the site cannot be developed. She suggested there be another discussion about tree preservation and in a more robust way than before.

Ms. Newell directed the Commission to go to the Department of Natural Resources for information as there is a list of endangered plant species whether its trees, plants, or beneficial weeds. She said that information should be considered if move forward with preservation.

Mr. Brown directed everyone to the GIS Survey because it shows different layers that include utilities, endangered species and protected sensitive areas and such and identifies quite a few. He said there are Paw Paw trees, Rock Cress growth, and Columbine identified.

Ms. Mitchell said endangered species and protected sensitive areas will represent value space choices if we choose to go down this preservation path and it is very important to consider. She said one value could be about preserving landmark, large trees, and another would be preserving endangered or rare species. She suggested this be discussed with City Council and others; there should be some guidelines around this.

The Chair asked staff how they would like the Commission to proceed this evening. Ms. Husak responded that staff can address many of the concerns heard this evening in a revised draft but some of the issues might be better addressed during the Code update that Council also requested from staff. She said this policy update was started first.

Ms. Husak said Council has subcommittees that deal with certain subjects in the community and this might be something we could take to the Community Development Committee, per Council.

Ms. Newell said it is one thing to identify a tree as a landmark tree because it is 24 inches in diameter but not everything we will want to preserve is going to be 24 inches and it needs to be included within this text because this is what we are enforcing on the PUDs where just the caliper is discussed. She said we should be considering rare and endangered species as well.

Mr. Krawetzki pointed out that staff has a provision that the City Forester can identify those trees and it is then their prerogative to bump them up to a higher priority.

Ms. Husak said in the policy being proposed, if a tree were put in a higher category based on the City Forester's judgement that it does not require preservation but that is not the intent of the policy. She emphasized that this policy is to alleviate some replacement burden.

Mr. Papsidero said this is a tool to deal with the present issue of the Tree Replacement Waiver requests. He said it would take a true comprehensive effort to look at conservation that would have multiple layers to it including protecting certain species, certain sizes, regardless of this policy.

Ms. Husak said at that point, we probably would also want to have the development community be part of the discussion.

Ms. De Rosa asked if with this policy going to Council that it also be stated that this is what we have going with preservation and this is what we would address there. She indicated that Council can decide how urgent that is on the list of priorities. She said she likes a value space being incorporated into this policy because it meets the spirit of what we are trying to do.

Ms. Salay said this is really important for Council to hear and reflect on as it goes to the heart of our community values. She said it would be hard to find a Dublin resident that is not all about trees.

Mr. Brown said he thought staff has heard the Commission and will continue to work on refinement of the policy. He said he was ready to make a motion that we approve the Tree Replacement Fee Waiver with a recommendation that staff continue to refine it before final approval by Council while taking into consideration for conservancy and updating the full tree replacement Code. Ms. Mitchell said she seconded that motion.

Motion and Vote

Mr. Brown moved, Ms. Mitchell seconded to recommend approval to City Council for the Administrative request to update the Tree Replacement Fee Waiver policy as staff continues to refine it before final approval by Council while taking conservancy into consideration and updating the full tree replacement portion of the Code. The vote was as follows: Ms. De Rosa, yes; Mr. Stidhem, yes; Mr. Miller, yes; Ms. Newell, yes; Ms. Salay, yes; Ms. Mitchell, yes; and Mr. Brown, yes. (Recommended for Approval 7 – 0)

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occurs. He asked about people who move next to a property such as this, where horses have been boarded for many years, and whether the new neighbors can file a nuisance claim for the existing non-conforming use.

Ms. Readler stated that denying the Agricultural District application for this land does not mean that Mr. Tobias will have nuisance claims filed against him in the future.

Mayor Peterson stated that he is hopeful that the business is very successful into the future. He struggles, however, with the standard that he must consider and apply in this deliberation.

Mr. Lecklider agreed with Mayor Peterson's statements.

Mayor Peterson moved to reject the application, based on the reasons outlined in the staff recommendation.

Vice Mayor Reiner seconded the motion.

Vote on the motion: Mr. Lecklider, yes; Ms. Alutto, yes; Mayor Peterson, yes; Ms. Salay, yes; Vice Mayor Reiner, yes; Mr. Keenan, yes; Ms. Amorose Groomes, yes.

- "Tobacco 21" Age Prohibition Proposed Legislation

Ms. Readler reported that there have been local efforts to increase the age-of-sale for tobacco products from eighteen to 21 years of age. This movement, commonly known as "Tobacco 21" has spread across the country in recent years. Over 200 municipalities as well as the states of Hawaii and California have passed legislation to limit the sale of tobacco products to individuals over twenty-one. Legal staff has provided Council with a draft ordinance to consider.

Vice Mayor Reiner moved to direct staff to prepare this legislation and schedule on an upcoming agenda.

Ms. Salay seconded the motion.

Vote on the motion: Mr. Keenan, yes; Ms. Amorose Groomes, yes; Vice Mayor Reiner, yes; Mr. Lecklider, yes; Ms. Alutto, yes; Mayor Peterson, yes; Ms. Salay, yes.

- Status of Medical Marijuana Rules and Local Legislation in Ohio

Ms. Readler reported that on May 25, 2016, the Ohio General Assembly passed Substitute House Bill 523 (HB523). This allows individuals with a qualifying medical condition, on the recommendation of a physician, to apply to the State, and upon approval of their application receive an identification card allowing them to obtain, possess and use medical marijuana for the treatment of the specified condition. HB523 expressly affirms that municipalities may adopt restrictions, including prohibiting or limiting the number of cultivators, processors, or retail dispensaries of medical marijuana within their corporate limits.

Ms. Readler stated that it is staff's recommendation that the City enact a ban upon medical marijuana cultivators, dispensaries, and processors within Dublin.

Mayor Peterson moved to direct staff to draft legislation to enact a ban upon medical marijuana cultivators, dispensaries, and processors.

Mr. Lecklider seconded the motion.

Vote on the motion: Mayor Peterson, yes; Ms. Salay, yes; Mr. Lecklider, yes; Mr. Keenan, yes; Ms. Alutto, yes; Vice Mayor Reiner, yes; Ms. Amorose Groomes, yes.

- Tree Preservation/Replacement Fee Waiver Policy

Ms. Husak stated that staff has researched this issue. A majority of the past waivers have been requested as stand-alone Council actions, and Council has granted a total of 22 waivers (six were approved prior to the adoption of the policy). Several developments, however, have requested relief from the tree replacement requirement through development agreements and through the planned district rezoning process by incorporating waiver language in the development text.

Ms. Husak stated that staff provided Council with four options in their packet for review and staff's recommendation is for Council to consider a Code revision as well as updating

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the current policy. Council could also request the input of their boards and commissions as may be appropriate or required.

Mayor Peterson noted he supports options two and three -- the policy update and Code revision, respectively.

Mr. Keenan stated that his goal is having consistency in this process.

Ms. Amorose Groomes stated in regard to the policy update that she would prefer to have criteria that is measurable and calculated. The Code revision is far more difficult because whenever there are changes to the Code, there are unintended consequences. She is supportive of both options, but does not believe they need to be done together.

Mayor Peterson moved to direct staff to propose a policy update on the Tree Preservation/Replacement Fee Waiver Policy with proposed Code revisions to follow. Ms. Alutto seconded the motion.

Vote on the motion: Mr. Lecklider, yes; Vice Mayor Reiner, yes; Mr. Keenan, yes; Ms. Amorose Groomes, yes; Ms. Alutto, yes; Mayor Peterson, yes; Ms. Salay, yes.

STAFF COMMENTS

- Recommendation to remove Basic Plan Review- Columbus Metropolitan Library, Dublin Branch (Case 17-002ARB-BPR) and Basic Plan Review- Library Parking Garage (Case 17-003ARB-BPR) from the table and schedule both items for hearing on the April 24, 2017 Council agenda

Mr. McDaniel reviewed the memo from Mr. Losinski, Columbus Metropolitan Library requesting that City Council schedule review of the Basic Plan at the April 24, 2017 meeting. Mr. McDaniel therefore recommends removing both the library and the parking garage items from the table and scheduling them for consideration at the April 24, 2017 Council meeting.

Mayor Peterson invited public testimony.

Jerry Kosicki, 4313 Wyandotte Woods Boulevard, Dublin stated he is a 30-year resident of the School District and a 22-year Dublin resident. The community should say "yes" to the new library project as proposed. Everyone agrees that the current library needs to be replaced. The current building is not historic and it will be replaced with another larger, but non-historic building. The scale is not out of line with what has been built at Bridge and High. Some of the building will be below the existing grade to minimize its height. The design is dramatic and imaginative and it will be great for that location. As people come over the pedestrian bridge from Bridge Park East, past the mixed-use building that is nearing completion on the west side, it will seem like the perfect fit. Cities grow organically, and the most loved factor of Old Dublin is its authenticity. It was built by people, building by building, over a long period of time. Those buildings are the records in time of when they were built and the people who built them and the way they lived. The proposed building will be an authentic representation of our time. Change is sometimes hard for some people to accept; others thrive on change. A major library is an important building in any city, as it stands as a monument to learning and human advancement through knowledge. Libraries throughout the world have been embracing contemporary design, because this has a unique ability to unleash human imagination and encourage creative thinking by young people and adults. Some say the building doesn't fit, but he disagrees. If there ever has been a community built on education and entrepreneurial and unconventional, out of the box thinking, it is Dublin. It is this creative spirit and get things done attitude that has attracted so many to this very remarkable, well-loved city that we proudly call "home." Repurposing the site of Dublin's first three-story school building for human learning helps renew the connection between this prominent historic spot within the community and the intense commitment to public education and maximizing human potential that the City and its people are all about. With a few partners, including Dublin residents Kevin Cooper, Andrew Graham and Kris Aldemir, they have created a petition at the change.org site in support of the proposed contemporary library. He invites the people of Dublin to sign on to this grass roots

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~~Ms. Rauch responded that the number would decrease on a tree-for-tree basis instead of an inch-for-inch basis.~~

~~Ms. Alutto stated that is less than half of what would be required per Code. In her opinion, poor planning on the applicant's part does not necessitate Council approval of a waiver. She has no history in terms of tree preservation waivers, but to her, a tree is a tree, regardless of whether it is secondary growth. If they want to cut a tree down, they should pay the required amount.~~

~~Ms. Amorose Groomes stated that she is not inclined to support the waiver. There was a tremendous amount of insensitivity to the City's landmark trees. They are removing 12 landmark trees on 13 acres! Those were financial decisions they made when pursuing their layout. The removal of trees has a cost. They made the decision that the tree was not worth planning around, so she would be inclined to require they pay the fee for not planning around that tree.~~

~~Vice Mayor Reiner concurred. This all happened in the planning portion of the project. His observation when you fly over Dublin is that there is a certain sense of cadence and order that is not viewed in other cities from a plane. Though the intensive density of the project is not being discussed tonight, how the site drainage is addressed affects preservation of the existing trees. It may not be possible to save all the trees that they would like to save, so it will require some funding to replace them. Therefore, he is not in favor of granting the waiver. The other issue is that most of the City subdivisions have a certain amount of mandated greenspace, which is planned into them. That provides a quality of life for the citizenry. This proposal is comprised of building upon building wrapping around the subdivision. He does not believe this waiver should be granted.~~

~~Ms. Alutto noted that when you manage by exception, you manage yourself into a slippery slope.~~

Ms. Salay stated that she is hearing opposition not just to this waiver but also to the tree preservation ordinance in general. This is why the legislation was created, which was prior to her service on Council. At that time, the City wanted to do its best to ensure that trees lost during development were replaced in some way. It was designed to put developers on notice that when they develop a wooded site, or even an unwooded site with significant trees, they would either have to preserve them or pay to replace them. The waiver requested tonight does not have the votes for approval. Perhaps Council should also re-visit the tree preservation ordinance. This request is not that different from other tree preservation waivers that were approved over the years.

Ms. Readler noted that Council did adopt a policy regarding the criteria considered for a waiver. Council has the discretion to eliminate that policy going forward.

Mayor Peterson noted that he was disappointed with the criteria, which essentially states that if they make an attempt, that's good enough. Maybe that portion needs to be revisited.

Mr. Keenan stated that at this point, the issue is not with the trees, but with the cash penalty. The trees cannot all be accommodated on this site, but will be planted somewhere else. Presumably, the cash would be used to plant trees in other locations.

Ms. Amorose Groomes stated that the requirement is to plant the trees or pay a fee, but the request is for neither. The request is for a waiver – to neither have to plant or pay.

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Ms. Salay stated that the waiver policy and the tree preservation ordinance recognize that a site like this would be so expensive to develop, that it could be rendered undevelopable. That being the case, would the City be over-reaching in regard to private property rights? The ordinance that was adopted 16 years ago was an attempt to address that concern. Therefore, it seems Council should re-visit the tree preservation ordinance and examine the options.

Mr. Keenan pointed out that the landowner has a right to develop their land; the City has a right to zone it. Balancing the two is difficult. The City has reviewed other proposals for this site. This proposal, in terms of height and other considerations, seems to be as good as anything previously proposed. The issue now, however, is with tree preservation, so perhaps Council does need to revisit the legislation. If the restrictions become too burdensome, no wooded sites would be developed.

Mr. Lecklider stated that is not a realistic outcome. Before reaching that point, the issue would be resolved in court. He would be careful saying that if a tree comes down, the developer would pay a penalty; if that is the case, the City does not have a tree waiver policy. If Council does not want to have a tree waiver policy, Council can have that conversation going forward.

Ms. Alutto stated that it is not that the requirements were not known – the developer was aware of them. When the development was approved, they were aware that if the trees had to be eliminated, they would need to pay cash in lieu of saving trees. However, if the City is going to waive their policy every time trees are removed, there is no point in having the policy. When you manage by exception, the door is opened and it is felt you have to go through it every time. Perhaps the tree preservation ordinance should be re-visited, as well.

Mr. Dugger stated that to provide some historic perspective, the event that triggered the City's tree preservation ordinance was the extension of Hard Road from Sawmill Road to Riverside Drive. The final plat was being reviewed by City Council, and someone asked about the impact of the road on a great big oak tree. No one knew its exact location, size or condition, so a consultant was hired to study the majestic oak tree. The report indicated that this oak tree was a witness to history; it was seven years old when the Declaration of Independence was signed. That was the catalyst for the tree preservation/replacement ordinance. Hard Road in front of Dublin Scioto High School was moved to avoid that tree, and that park was created to accommodate that very large tree. Tree preservation and replacement has been important to the City of Dublin since that time. The legislation that resulted was so groundbreaking and so onerous to developers that a safety valve was needed. In the event that the strict application of the City's legislation was such a hardship on the property, a mechanism would be in place to provide relief – the tree waiver policy. The policy was adopted in 2001 with established criteria. They were aware of the criteria. He does not believe that it is "management by exception." They believe that what they were doing was consistent with the tree waiver policy. There have been 17 tree waivers applied for and 17 tree waivers granted by Council that met the same requirement they are asking for today. Rather than management by exception – to be consistent, Council would approve this waiver request.

Ms. Alutto stated that she understands that they have worked with this accordingly. As the Mayor noted earlier, she also believes the criteria for an exception is unacceptable criteria. While she appreciates and respects what previous Councils have done, she believes she would feel as strongly about the previous requests as this one. She believes that if Council has a policy in place, waivers should occur few and far between, and with more stringent criteria than is in place today. Perhaps, the policy needed to change as the City grew, but that did not occur. She has received

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much communication about this tree waiver from very concerned neighbors. The amount of money is less than half of what is required. She has too many concerns to be able to support it as submitted.

Ms. Amorose Groomes noted that Hard Road was routed around the old oak tree to preserve the "witness to history." This proposal covers the entire site with development. Nothing was moved to preserve anything.

Mr. Dugger responded that is incorrect.

Ms. Amorose Groomes stated that the site layout is very unimaginative and development covers nearly the entire site.

Mr. Dugger stated that buildings were moved, parking areas were moved, underground detention was added and permeable pavers were added. This site does not have an effective storm water outlet; that is one of the challenges. At the time Dublin Scioto High School was built, there was no accommodation in the storm water system for this property, which drains to Dublin Scioto High School. Therefore, extraordinary efforts were needed in terms of storm water management. What Council is seeing tonight is the result of nine months of work with staff and the Planning Commission to come to a creative solution to address all those factors. He disagrees that this is an unimaginative plan that just covers the site. The analysis that was presented to the Planning Commission and on which a successful vote was received demonstrates that the proposal is less intense and no more dense than other projects that Dublin has recently approved. He understands that with a first look at the plan, it does appear to have more density and intensity than is warranted, but that is what was approved by the Commission.

Vice Mayor Reiner stated that there is another aspect to all of this. The City of Columbus has announced recently that they need to purchase and plant hundreds of thousands of trees to reduce the heat island in the urban setting. An Ohio State professor recently wrote an article about this. In Dublin, we value the health of our citizenry and have done some very progressive things. Thirty-six years ago, Dublin wrote the first ordinance about street tree plantings and buffers. Dublin has had been visionary in addressing this issue. The benefit of trees to our citizens is very important, and Dublin is taking another look at that, as well, in view of the recent findings. To him, the effect of the reduction of the green canopy is paramount in this consideration.

Ms. Readler requested that the motion be an affirmative one for purposes of clarity.

Mayor Peterson moved to approve the tree waiver request.

Mr. Lecklider seconded the motion.

Mr. Dugger stated that there has been some suggestion that Council re-evaluate the tree replacement policy, which can present a hardship. Is that correct?

Ms. Readler responded that Council might revisit the policy to allow a waiver request to come before Council. Part of that would involve looking at the requirements of the ordinance. There is concern about this particular development meeting or not meeting the current criteria of the policy.

Mayor Peterson noted the intent of revisiting the issue and the policy would be to give clarity to developers and the neighborhoods.

Ms. Amorose Groomes stated that it would largely be focused on the criteria, the basis for the decision. Maybe Council will continue to allow the waiver process, but the criteria would be narrowed.

Mr. Dugger stated that if he had some understanding of where Council was going on this, it would be helpful. A negative vote is prejudicial in that process, but he is struggling with finding a reasonable resolution.

Mayor Peterson stated that the intent is not to cut off his options. However, there is a request before Council on which a decision must be made. Mr. Dugger can choose to withdraw the waiver request if he desires.

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Mr. Dugger stated that in his view, the criteria are met, and that is the reason they pursued it. Because there is not a clear path as to what the new criteria might be, they must proceed with it.

Vote on the motion: Ms. Salay, yes; Mr. Lecklider, no; Ms. Amorose Groomes, no; Vice Mayor Reiner, no; Mayor Peterson, no; Mr. Keenan, yes; Ms. Alutto, no.

Mr. Keenan clarified that he votes affirmatively based on the request meeting the existing criteria. Any other action would be inconsistent with what Council has always done.

Ms. Alutto clarified that she votes "no" because she believes it is the right thing to do, and she is here to vote her conscience.

STAFF COMMENTS

Mr. McDaniel:

1. Noted that the City intends to open the SR 161/Riverside Drive roundabout on Friday evening, weather permitting. There will continue to be intermittent closures and disruptions over the next month as the project is finalized. There will be a celebration of its opening on Saturday, August 13 at 10 a.m. at The Shoppes at River Ridge, and everyone is invited to attend. It will be held in the area of Wendy's/Montgomery Inn.
2. Shared the City video on how to drive a roundabout, which is currently playing on the City's website.
3. Planning staff has engaged Clarion Consultants to guide the City through a revisit of the Bridge Street District sign code. Council has been invited to provide input on August 24 at 11 a.m. at the 5800 Building. Council can also contact the Planning Division to schedule a meeting with the Clarion consultants.
4. Reported that the COTA Park and Ride will open on Monday, September 5. More information will be provided as available.
5. Thanked Council for their support of the Dublin Irish Festival, the community who attended the Festival, and the volunteers who made this event possible. Thanks also to staff who worked throughout the weekend, and the Events Administration staff who oversaw the Festival's execution and planning. It was great to have the Consul General of Ireland, Orla McBreen in attendance on Friday evening for the opening. A Japanese delegation from Mashiko also was in the City and attended the Festival. Early preliminary information shows that the City had about 100,000 attendees, slightly down from last year's 104,000. This was the second hottest weather for the Irish Festival since it has been tracked in 1995.
6. Thanked the sponsors of the Festival. The sponsorship revenues were up 24 percent over last year. Onsite revenues were down by approximately 12 percent. Overall, the revenues will be down approximately 5 percent from last year. However, it remains the second highest revenue experienced for the Irish Festival. It was a successful event, and he appreciates everyone's support!
7. Noted that a special packet will be delivered to Council this week in anticipation of the CIP workshop on Monday, August 15. This is a preview of Monday evening's presentation, which will reiterate some of the information regarding affordability in the CIP, the sources of revenue, and the sources of funding. The information will highlight what the Administration's priorities were in developing a recommended CIP. There is also information highlighting some of the key projects in this presentation. The notebook

March 5, 2001 Council Action

OTHER

- Policy regarding fee waivers related to the tree preservation ordinance
MOTION CARRIED 6-0 TO AMEND THE POLICY OUTLINED IN 10/25/00 STAFF MEMO TO COUNCIL TO INCLUDE A PROVISION THAT LANDMARK TREES (24 INCHES OR GREATER IN DIAMETER) BE EXEMPT FROM THE TREE-FOR-TREE REPLACEMENT AND BE REPLACED ON AN INCH-FOR-INCH REPLACEMENT; AMENDED POLICY ADOPTED 6-0

March 5, 2001 Council minutes

OTHER

Policy regarding fee waivers related to the tree preservation ordinance

Ms. Newcomb provided a brief overview and history of the ordinance. The tree preservation ordinance was approved by Council in October of 1998. Within the landscape code, Dublin always has had a policy which required preservation of trees during the development process. What changed with the ordinance in 1998 was a new requirement for tree replacement, based upon an inch for inch replacement. The formula was designed to be simple to implement and enforce. If inch for inch replacement would result in overcrowding, there was an option to pay a fee to be used for planting of trees on public property. Overall, the ordinance has been very successful, resulting in shifting of buildings on sites to preserve trees, better location of utilities in relation to trees, and better tree preservation methods in general. Staff has recently provided a couple of memos regarding the proposed guidelines for fee waivers. Staff also reviewed the sliding scale proposed by Mr. McCash, but it did not yield the results as hoped.

Staff is now recommending the formula as originally proposed in October of 2000 that takes into consideration whether all codes have been met on the site and if methods have been used to minimize tree destruction. If both of these have been met, staff would then recommend a fee waiver or reduced fee, based on a tree for tree replacement as opposed to inch for inch. In addition, based on discussion at Council and Natural Resources Advisory Commission, landmark trees of 24 inches in diameter or greater would be replaced instead on an inch for inch basis. Mrs. Boring asked that the definition of landmark tree and the location of those trees be included in materials provided to developers. She then asked how adoption of this policy would affect the pending Preserve development.

Ms. Newcomb stated that the developer would have to file for a waiver from Council. They received a full waiver for the first phase of the project, but they have been informed that the policies are changing. The developer has indicated that the project is not feasible without a waiver.

Staff will prepare a report on the efforts they have made to preserve trees on the site to date, and will make a recommendation to Council for this and the other developments for which waivers have been requested.

Mr. Reiner stated that he is encouraged to hear that better planning for utility placement and structures has been an outcome of the tree preservation ordinance.

Mr. Adamek moved to amend the proposed formula as outlined in the October 25, 2000 memo to provide that landmark trees, those 24 inches in diameter or greater, are exempt from the tree for tree replacement and will instead be replaced on an inch for inch basis.

Mrs. Boring seconded the motion.

Vote on the motion - Mr. Reiner, yes; Mrs. Boring, yes; Mr. Peterson, yes; Mr. Adamek, yes; Mayor Kranstuber, yes; Ms. Chinnici-Zuercher, yes.

Mr. Adamek moved to adopt the policy as amended.

Mrs. Boring seconded the motion.

Vote on the motion – Mayor Kranstuber, yes; Mr. Reiner, yes; Mr. Peterson, yes; Mr. Adamek, yes; Ms. Chinnici-Zuercher, yes; Mrs. Boring, yes.

Benchmarking for Tree Waiver Policy

Staff has reviewed tree replacement ordinances for other central Ohio communities and found that **Powell** requires the same tree replacement as Dublin but allows replacement at 1.5 inches.

Westerville includes a sliding scale for 1:1 replacements for trees under 12 inches, 2:1 for up to 18-inch trees, 3:1 for up to 24-inch trees, 4:1 for up to 24-inch trees and 5:1 for up to 30-inch trees. There is an exception for heavily wooded sites which are required to retain 40% of the canopy and new trees must be planted to create the same canopy as before within 30 years.

Delaware requires the same replacement as Dublin but allows replacement trees at a size of 1.75 inches and permits off-site replacements.

Additionally, Staff has reviewed comparable suburban communities including Waukegan, IL; Cupertino, CA; and Decatur, GA.

Waukegan requires 'inch-for-inch' replacement of all trees unless the Director of Planning and Zoning deems a reduction in the requirement consistent with the intent of the regulations. All replacement trees are required to be a minimum of 3 inches. If a waiver is granted a fee-in-lieu is required at \$125 per caliper inch not replaced. Identified noxious or restricted trees require an inch for two inch replacement. In addition, dead or dying trees do not require replacement and deciduous trees can only be replaced with deciduous trees.

Cupertino requires all replacement trees be box trees and located on site. Cupertino requires one 24-inch tree for trees under 12 inches, two 24-inch or one 36-inch tree for trees 12 inches or greater up to 36 inches, one 36-inch tree for trees greater than 36 inches, and one 48-inch tree for a Heritage Tree, a tree that is designated and tagged by the City. If the trees cannot be replaced on-site a fee-in-lieu may be paid to the City based on the cost of replacing the tree at the time for trees less than 36 inches, or based on the assessed value of the existing tree for trees over 36 inches and heritage trees. These fees are paid to the City's Tree Fund for tree planting or replacement on designated City property.

Decatur requires tree canopy replacement dependent on the type of development and level of tree removal or disturbance. For commercial sites with less than 45% tree canopy cover after permitted tree removal, the amount removed must be replaced depending on the percentage of increased impervious cover or floor area. If the increase in impervious cover or floor area is less than 15 percent, tree replacement to no net loss is required. If the increase in impervious cover or floor area is 15% or greater, replacement to 45% tree canopy cover is required. Replacement is not required if the site maintains over 45% tree canopy cover after permitted removal. In addition, the removal of a protected tree without a valid tree removal permit requires replacement on site in the amount of two times the amount removed. Payments in lieu of required replacement plantings shall not be approved for commercial sites. However, if determined by the City Arborist that replacement is not feasible, a payment in lieu of planting up to 75% of the tree canopy cover requirement may be made to the Tree Bank. For residential sites, removal of a tree that requires a removal permit shall require replanting to maintain no net loss. If required replacement trees cannot be accommodated, a payment in lieu to the Tree Bank for up to 50% of the canopy replacement requirement must be made. For residential

properties with greater than 60% tree canopy cover, a payment in lieu to the Tree Bank for up to 100% of the canopy replacement requirement may be made.